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Chief Clerk of the House

FILED MAR 03 2005

By: Bomen

H.B. No. 1987

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of underground and aboveground storage
tanks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.342, Water Code, is amended by adding
Subsection (16-a) to read as follows:

(16-a) "Subsurface soil" does not include backfill or
native material that is placed immediately adjacent to or
surrounding an underground storage tank system when the system is
installed or the system's individual components are replaced.

SECTION 2. Sections 26.3467(b) and (c), Water Code, are
amended to read as follows:

(b) An owner or operator of an underground storage tank [~~A
person~~] who [~~knowingly~~] violates Subsection (a) commits an offense
that is punishable as provided by Section 7.156 for an offense under
that section.

(c) A person who sells a regulated substance to a common
carrier who delivers the regulated substance to the owner or
operator of an underground storage tank into which the regulated
substance is deposited, and who does not deliver the regulated
substance into the underground storage tank, and the common carrier
who delivers the regulated substance to the owner or operator of an
underground storage tank into which the regulated substance is
deposited, are [~~is~~] not liable under this chapter with respect to

"RECEIVED"

1 that tank.

2 SECTION 3. (a) Sections 26.3467(b) and (c), Water Code, as
3 amended by this Act applies only to an offense committed on or after
4 the effective date of this Act. For purposes of this section, an
5 offense is committed before the effective date of this Act if any
6 element of the offense occurs before that date.

7 (b) An offense committed before the effective date of this
8 Act is covered by the law in effect when the offense was committed,
9 and the former law is continued in effect for that purpose.

10 SECTION 4. Section 26.355(b), Water Code, is amended to
11 read as follows:

12 (b) An owner or operator of an underground or aboveground
13 storage tank from which a regulated substance is released is liable
14 to the state unless:

15 (1) the release was caused by:

16 (A) [1] an act of God;

17 (B) [2] an act of war;

18 (C) [3] the negligence of the State of Texas or
19 the United States; or

20 (D) [4] an act or omission of a third party; or

21 (2) the site at which the release occurred has been
22 admitted into the petroleum storage tank state-lead program under
23 Section 26.3573(r-1).

24 SECTION 5. Section 26.3573, Water Code, is amended by
25 amending Subsections (r) and (s) and adding Subsection (r-1) to
26 read as follows:

27 (r) Except as provided by Subsection (r-1), the [The]

1 petroleum storage tank remediation account may not be used to
2 reimburse any person for corrective action performed after
3 September 1, 2005.

4 (r-1) The executive director shall grant an extension for
5 corrective action reimbursement to a person if the person
6 demonstrates to the executive director that the person has
7 diligently and in good faith attempted to complete all corrective
8 action by September 1, 2005. The petroleum storage tank
9 remediation account may be used to reimburse a person for
10 corrective action performed under an extension before September 2,
11 2007. If a person who is granted an extension for corrective action
12 reimbursement is not able to complete the corrective action by
13 September 1, 2007, despite a good faith effort, the executive
14 director by order shall place the site subject to the corrective
15 action in the commission's petroleum storage tank state-lead
16 program until the corrective action is completed to the
17 satisfaction of the commission.

18 (s) The petroleum storage tank remediation account may not
19 be used to reimburse any person for corrective action contained in a
20 reimbursement claim filed with the commission after March 1, 2008
21 [2006].

22 SECTION 6. Section 26.361, Water Code, is amended to read as
23 follows:

24 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
25 Notwithstanding any other provision of this subchapter, the
26 reimbursement program established under this subchapter expires
27 September 1, 2008 [2006]. On or after September 1, 2008 [2006], the

1 commission may not use money from the petroleum storage tank
2 remediation account to reimburse an eligible owner or operator for
3 any expenses of corrective action or to pay the claim of a person
4 who has contracted with an eligible owner or operator to perform
5 corrective action.

6 SECTION 7. This Act takes effect September 1, 2005.

05 APR 13 PM 8:45
HOUSE OF REPRESENTATIVES

**HOUSE
COMMITTEE REPORT**
1st Printing

By: Bonnen

H.B. No. 1987

Substitute the following for H.B. No. 1987:

By: Bonnen

C.S.H.B. No. 1987

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of underground and aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.342, Water Code, is amended by adding Subsection (16-a) to read as follows:

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION 2. Sections 26.3467(a) and (b), Water Code, are amended to read as follows:

(a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank [A

1 ~~person~~ who [~~knowingly~~] violates Subsection (a) commits an offense
2 that is punishable as provided by Section 7.156 for an offense under
3 that section.

4 SECTION 3. Section 26.355(b), Water Code, is amended to
5 read as follows:

6 (b) An owner or operator of an underground or aboveground
7 storage tank from which a regulated substance is released is liable
8 to the state unless:

9 (1) the release was caused by:

10 (A) [~~(1)~~] an act of God;

11 (B) [~~(2)~~] an act of war;

12 (C) [~~(3)~~] the negligence of the State of
13 Texas or the United States; or

14 (D) [~~(4)~~] an act or omission of a third
15 party; or

16 (2) the site at which the release occurred has been
17 admitted into the petroleum storage tank state-lead program under
18 Section 26.3573(r-1).

19 SECTION 4. Section 26.3573, Water Code, is amended by
20 amending Subsections (r) and (s) and adding Subsection (r-1) to
21 read as follows:

22 (r) Except as provided by Subsection (r-1), the [~~The~~]
23 petroleum storage tank remediation account may not be used to
24 reimburse any person for corrective action performed after
25 September 1, 2005.

26 (r-1) In this subsection, "state-lead program" means the
27 petroleum storage tank state-lead program administered by the

1 commission. The executive director shall grant an extension for
2 corrective action reimbursement to a person who is an eligible
3 owner or operator under Section 26.3571. The petroleum storage
4 tank remediation account may be used to reimburse an eligible owner
5 or operator for corrective action performed under an extension
6 before August 31, 2007. Not later than July 1, 2007, an eligible
7 owner or operator who is granted an extension under this subsection
8 may apply to the commission in writing using a form provided by the
9 commission to have the site subject to corrective action placed in
10 the state-lead program. The eligible owner or operator must agree
11 in the application to allow site access to state personnel and state
12 contractors as a condition of placement in the state-lead program
13 under this subsection. On receiving the application for placement
14 in the state-lead program under this subsection, the executive
15 director by order shall place the site in the state-lead program
16 until the corrective action is completed to the satisfaction of the
17 commission. An eligible owner or operator of a site that is placed
18 in the state-lead program under this subsection is not liable to the
19 commission for any costs related to the corrective action.

20 (s) The petroleum storage tank remediation account may not
21 be used to reimburse any person for corrective action contained in a
22 reimbursement claim filed with the commission after March 1, 2008
23 [~~2006~~].

24 SECTION 5. Section 26.361, Water Code, is amended to read as
25 follows:

26 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
27 Notwithstanding any other provision of this subchapter, the

1 reimbursement program established under this subchapter expires
2 September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the
3 commission may not use money from the petroleum storage tank
4 remediation account to reimburse an eligible owner or operator for
5 any expenses of corrective action or to pay the claim of a person
6 who has contracted with an eligible owner or operator to perform
7 corrective action.

8 SECTION 6. (a) Section 26.3467(b), as amended by this Act,
9 applies only to an offense committed on or after the effective date
10 of this Act. For purposes of this section, an offense is committed
11 before the effective date of this Act if any element of the offense
12 occurs before that date.

13 (b) An offense committed before the effective date of this
14 Act is governed by the law in effect when the offense was committed,
15 and the former law is continued in effect for that purpose.

16 SECTION 7. This Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

3.29.05
(date)

Sir:
We, your COMMITTEE ON ENVIRONMENTAL REGULATION
to whom was referred H.B. 1987 have had the same under consideration and beg to report
back with the recommendation that it

- () do pass, without amendment.
- () do pass, with amendment(s).
- (X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (X) yes () no A fiscal note was requested.
- () yes (X) no A criminal justice policy impact statement was requested.
- () yes (X) no An equalized educational funding impact statement was requested.
- () yes (X) no An actuarial analysis was requested.
- () yes (X) no A water development policy impact statement was requested.
- () yes (X) no A tax equity note was requested.
- () The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Bonnen, Chair	X			
Howard, Vice-chair	X			
Driver	X			
Homer	X			
King, T.	X			
Kuempel	X			
Smith, W.	X			

Total 7 aye
 0 nay
 0 present, not voting
 0 absent

Thomas Bonner
CHAIR

BILL ANALYSIS

C.S.H.B. 1987
By: Bonnen
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, remediation of a petroleum storage tank site is required to be completed by September 2005 to be eligible for reimbursement from the petroleum storage tank remediation account. However there are approximately 2,000 petroleum storage tank sites still being cleaned up today. The majority of these will not make the September 1, 2005 deadline because of circumstances outside the owner's control. For example, there are over 350 sites above the Ogallala aquifer in West Texas where corrective action activities have taken longer and are more expensive because of the depth to groundwater. In addition, one of the largest contractors who performs the remediations went bankrupt. This bill extends the program to September 2007. The extension of the program will be funded from the existing fee currently paid by distributors of motor fuel when they remove motor fuel from a terminal.

Under current law transporters of motor fuel are held responsible for depositing motor fuel into underground storage tanks which do not have a valid TCEQ issued delivery certificate. Because deliveries often occur at night when most retail facilities are closed, carriers are often unable to verify these certificates each time they deliver motor fuel to a retail location. C.S.H.B. 1987 provides clarification as to who is responsible for verifying certificates by specifying that the owner or operator commits an offense for not providing the certificate.

Additionally, the bill clarifies cleanup standards to provide that contamination found in the backfill material surrounding a storage tank that does not indicate a major contamination need not trigger a full-scale remediation of the site.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1997 amends the Water Code to clarify that the owner or operator of an underground storage tank, rather than "a person", commits a violation under provisions relating to the duty to ensure certification of a tank before delivery of a regulated substance. The bill provides that an owner or operator of an underground storage tank may comply with certification statutes by obtaining a current copy of the certificate from the Internet website of the Texas Commission on Environmental Quality (TCEQ).

The bill provides that the owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless the site at which the release occurred has been admitted into the petroleum storage tank state-lead program. The bill sets forth provisions under which the Executive Director of the TCEQ is required to grant an extensions for corrective action reimbursement and requirements for the owner or operator to perform the corrective action. The bill extends from 2006 to 2008, the petroleum storage tank corrective action reimbursement program for those who are already participating in the program.

The bill provides that the definition of subsurface soil does not include backfill material unless free phase petroleum product is present in the backfill material.

EFFECTIVE DATE

C.S.H.B. 1987 79(R)

1

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes provisions in the original bill that exempted from liability the common carrier who delivers a regulated substance to the owner or operator of an underground storage tank. The substitute amends the definition of "subsurface soil". The substitute adds provisions that provide that an owner or operator of an underground storage tank may comply with certification statutes by obtaining a current copy of the certificate from the Internet website of the Texas Commission on Environmental Quality. The substitute clarifies the definition of "state-lead program" used in the statutes addressed by the bill. The substitute amends the provisions under which the Executive Director of the TCEQ is required to grant an extension for corrective action reimbursement. The substitute allows an eligible owner or operator to apply for the state-lead program rather than requiring them to participate. The substitute sets forth provisions relating to their participation in the state-lead program.

SUMMARY OF COMMITTEE ACTION

HB 1987

March 22, 2005 8:00AM

Considered in public hearing
Committee substitute considered in committee
Testimony taken in committee (See attached witness list.)
Left pending in committee

March 29, 2005 2:00PM or upon final adjourn./recess

Considered in public hearing
Committee substitute considered in committee
Reported favorably as substituted

WITNESS LIST

HB 1987
HOUSE COMMITTEE REPORT
Environmental Regulation Committee

March 22, 2005 - 8:00AM

Committee Substitute (Howard)

For: Newton, Chris (Tx Petroleum Marketers and Convenience
Store Assoc.)
On: Hardee, Jackie (Tx Comm. on Environmental Quality)

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 31, 2005

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1987 by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
2008	(\$35,160,000)
2009	(\$17,700,000)
2010	(\$9,200,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from PETRO STO TANK REMEDIATION ACCT 655	Probable (Cost) from HAZARDOUS/WASTE FEE ACCT 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
2009	(\$17,700,000)	\$0	(\$7,200,000)	80.0
2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill also would strike language specifying that a certain percentage of the PST Remediation Account No. 655 may be used to pay administrative expenses of the PST remediation program.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 being transferred each fiscal year to the Waste Management Account No. 549. Although language providing for PST Remediation Account No. 655 to be used for administrative expenses and a statutory limit for the percentage of receipts to the PST Remediation Account No. 655 would be deleted by the bill, this estimate still assumes that funds from the PST Remediation Account No. 655 would still transfer to the Waste Management Account No. 549 to be used for administrative purposes, since other statutory provisions allow for the account to be used to pay expenses associated with cleanups. However, revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), so the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 21, 2005

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1987 by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), As Introduced

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, As Introduced: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
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All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from PETRO STO TANK REMEDIATION ACCT 655	Probable (Cost) from HAZARDOUS/WASTE FEE ACCT 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
2009	(\$17,700,000)	\$0	(\$7,200,000)	80.0
2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 that can be transferred to the Waste Management Account No. 549, with a statutory limit of 21.1 percent of annual revenues. Since revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

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Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

ADOPTED as amended
MCE

APR 27 1985

Ra
Chris Clerk
House of Representatives

By: Bonner

H.B. No. 1987

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By: Bonner

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(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION ⁽³⁾ ~~2~~ Sections 26.3467(a) and (b), Water Code, are amended to read as follows:

(a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank [A

1 ~~person~~ who [~~knowingly~~] violates Subsection (a) commits an offense
2 that is punishable as provided by Section 7.156 for an offense under
3 that section.

4 SECTION ⁽⁵⁾ ~~3~~. ^{((INSERT 2))} Section 26.355(b), Water Code, is amended to
5 read as follows:

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8 to the state unless:

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10 (A) [~~1~~] an act of God;

11 (B) [~~2~~] an act of war;

12 (C) [~~3~~] the negligence of the State of
13 Texas or the United States; or

14 (D) [~~4~~] an act or omission of a third
15 party; or

16 (2) the site at which the release occurred has been
17 admitted into the petroleum storage tank state-lead program under
18 Section 26.3573(r-1).

19 SECTION ⁽⁶⁾ ~~4~~. ^{((d))} Section 26.3573, Water Code, is amended by
20 amending Subsections ^(r) ~~(r)~~ and (s) and adding Subsection (r-1) to
21 read as follows:

22 ^{((INSERT 3))} (r) Except as provided by Subsection (r-1), the [~~The~~]
23 petroleum storage tank remediation account may not be used to
24 reimburse any person for corrective action performed after
25 September 1, 2005.

26 (r-1) In this subsection, "state-lead program" means the
27 petroleum storage tank state-lead program administered by the

1 commission. The executive director shall grant an extension for
2 corrective action reimbursement to a person who is an eligible
3 owner or operator under Section 26.3571. The petroleum storage
4 tank remediation account may be used to reimburse an eligible owner
5 or operator for corrective action performed under an extension
6 before August 31, 2007. Not later than July 1, 2007, an eligible
7 owner or operator who is granted an extension under this subsection
8 may apply to the commission in writing using a form provided by the
9 commission to have the site subject to corrective action placed in
10 the state-lead program. The eligible owner or operator must agree
11 in the application to allow site access to state personnel and state
12 contractors as a condition of placement in the state-lead program
13 under this subsection. On receiving the application for placement
14 in the state-lead program under this subsection, the executive
15 director by order shall place the site in the state-lead program
16 until the corrective action is completed to the satisfaction of the
17 commission. An eligible owner or operator of a site that is placed
18 in the state-lead program under this subsection is not liable to the
19 commission for any costs related to the corrective action.

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21 be used to reimburse any person for corrective action contained in a
22 reimbursement claim filed with the commission after March 1, 2008
23 [~~2006~~].

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26 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
27 Notwithstanding any other provision of this subchapter, the

1 reimbursement program established under this subchapter expires
2 September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the
3 commission may not use money from the petroleum storage tank
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5 any expenses of corrective action or to pay the claim of a person
6 who has contracted with an eligible owner or operator to perform
7 corrective action.

8 SECTION ⁸⁾~~6~~. (a) Section 26.3467(b), ^{Water Codes,} as amended by this Act,
9 applies only to an offense committed on or after the effective date
10 of this Act. For purposes of this section, an offense is committed
11 before the effective date of this Act if any element of the offense
12 occurs before that date.

13 (b) An offense committed before the effective date of this
14 Act is governed by the law in effect when the offense was committed,
15 and the former law is continued in effect for that purpose.

16 SECTION ⁹⁾~~7~~. This Act takes effect September 1, 2005.

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB1987-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Bonnen	Amendment	Adopted



ADOPTED

APR 22 2005

Re
House of Representatives

NCB
CKC
AD

FLOOR AMENDMENT NO. 1

BY:

BONNEN

Amend C.S.H.B. No. 1987 (House committee printing) as follows:

(1) Add the following appropriately numbered sections to the bill and renumber the subsequent sections accordingly: ((INSERT)))

SECTION 1. Section 7.156(c), Water Code, is amended to read as follows:

(c) A person commits an offense if the person is an owner or operator of an underground [~~underground~~] storage tank regulated under Chapter 26 into which any regulated substance is delivered [~~or physically delivers any regulated substance into an underground storage tank regulated under Chapter 26~~] unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

SECTION 4. Section 26.351(f), Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person

((INSERT 2, cont. on next pg.))

''' INSERT 2, cont.'''

1 may, in lieu of this requirement, submit by this same deadline a
2 demonstration that a corrective action plan is not required for the
3 site in question under commission rules. Such demonstration must
4 be to the executive director's satisfaction;

5 (3) for those sites found under Subdivision (2) to
6 require a corrective action plan, that plan must be initiated and
7 proceeding according to the requirements and deadlines in the
8 approved plan no later than March 1, 2004;

9 (4) for sites which require either a corrective action
10 plan or groundwater monitoring, a comprehensive and accurate annual
11 status report concerning those activities must be submitted to the
12 agency;

13 (5) for sites which require either a corrective action
14 plan or groundwater monitoring, all deadlines set by the executive
15 director concerning the corrective action plan or approved
16 groundwater monitoring plan shall be met; and

17 (6) for sites that require either a corrective action
18 plan or groundwater monitoring, have met all other deadlines under
19 this subsection, and have submitted annual progress reports that
20 demonstrate progress toward meeting closure requirements, a site
21 closure request must be submitted to [~~requests for all sites where~~]
22 the executive director [~~agreed in writing that no corrective action~~
23 ~~plan was required must be received by the agency~~] no later than
24 September 1, 2007 [2005]. The request must be complete, as judged
25 by the executive director.

26 ✓(2) On page 2, line 20, strike "(r) and" and substitute
27 "(d), (r), and".

28 (3) On page 2, between lines 21 and 22, insert the
29 following:

30 (d) The commission may use the money in the petroleum
31 storage tank remediation account to pay:

''' INSERT 2, cont on next pg.'''

1. INSERT 3, cont.)

1 ~~CH~~(1) necessary expenses associated with the
2 administration of the petroleum storage tank remediation account
3 and the groundwater protection cleanup program[, ~~not to exceed an~~
4 ~~amount equal to: 11.8 percent of the gross receipts of that account~~
5 ~~for FY02/03, 16.40 percent of the gross receipts of that account for~~
6 ~~FY04/05, and 21.1 percent of the gross receipts of that account for~~
7 ~~FY06/07~~];

8 (2) expenses associated with investigation, cleanup,
9 or corrective action measures performed in response to a release or
10 threatened release from a petroleum storage tank, whether those
11 expenses are incurred by the commission or pursuant to a contract
12 between a contractor and an eligible owner or operator as
13 authorized by this subchapter; and

14 (3) subject to the conditions of Subsection (e) [~~of~~
15 ~~this section~~], expenses associated with investigation, cleanup, or
16 corrective action measures performed in response to a release or
17 threatened release of hydraulic fluid or spent oil from hydraulic
18 lift systems or tanks located at a vehicle service and fueling
19 facility and used as part of the operations of that facility.

HOUSE ENGROSSMENT

By: Bonnen

H.B. No. 1987

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of underground and aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 7.156(c), Water Code, is amended to read as follows:

(c) A person commits an offense if the person is an owner or operator of an underground ~~[underground]~~ storage tank regulated under Chapter 26 into which any regulated substance is delivered ~~[or physically delivers any regulated substance into an underground storage tank regulated under Chapter 26]~~ unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

SECTION 2. Section 26.342, Water Code, is amended by adding Subsection (16-a) to read as follows:

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION 3. Sections 26.3467(a) and (b), Water Code, are amended to read as follows:

1 (a) The owner or operator of an underground storage tank
2 into which a regulated substance is to be deposited shall provide
3 the common carrier a copy of the certificate of compliance for the
4 specific underground storage tank into which the regulated
5 substance is to be deposited before accepting delivery of the
6 regulated substance into the underground storage tank. The owner
7 or operator of an underground storage tank may comply with this
8 subsection by obtaining a current copy of the certificate from the
9 commission's Internet website.

10 (b) An owner or operator of an underground storage tank [A
11 ~~person~~] who [~~knowingly~~] violates Subsection (a) commits an offense
12 that is punishable as provided by Section 7.156 for an offense under
13 that section.

14 SECTION 4. Section 26.351(f), Water Code, is amended to
15 read as follows:

16 (f) The person performing corrective action under this
17 section, if the release was reported to the commission on or before
18 December 22, 1998, shall meet the following deadlines:

19 (1) a complete site assessment and risk assessment
20 (including, but not limited to, risk-based criteria for
21 establishing target concentrations), as determined by the
22 executive director, must be received by the agency no later than
23 September 1, 2002;

24 (2) a complete corrective action plan, as determined
25 by the executive director and including, but not limited to,
26 completion of pilot studies and recommendation of a cost-effective
27 and technically appropriate remediation methodology, must be

1 received by the agency no later than September 1, 2003. The person
2 may, in lieu of this requirement, submit by this same deadline a
3 demonstration that a corrective action plan is not required for the
4 site in question under commission rules. Such demonstration must
5 be to the executive director's satisfaction;

6 (3) for those sites found under Subdivision (2) to
7 require a corrective action plan, that plan must be initiated and
8 proceeding according to the requirements and deadlines in the
9 approved plan no later than March 1, 2004;

10 (4) for sites which require either a corrective action
11 plan or groundwater monitoring, a comprehensive and accurate annual
12 status report concerning those activities must be submitted to the
13 agency;

14 (5) for sites which require either a corrective action
15 plan or groundwater monitoring, all deadlines set by the executive
16 director concerning the corrective action plan or approved
17 groundwater monitoring plan shall be met; and

18 (6) for sites that require either a corrective action
19 plan or groundwater monitoring, have met all other deadlines under
20 this subsection, and have submitted annual progress reports that
21 demonstrate progress toward meeting closure requirements, a site
22 closure request must be submitted to ~~[requests for all sites where]~~
23 ~~the executive director [agreed in writing that no corrective action~~
24 ~~plan was required must be received by the agency]~~ no later than
25 September 1, 2007 ~~[2005]~~. The request must be complete, as judged
26 by the executive director.

27 SECTION 5. Section 26.355(b), Water Code, is amended to

read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) ~~[(1)]~~ an act of God;

(B) ~~[(2)]~~ an act of war;

(C) ~~[(3)]~~ the negligence of the State of Texas or the United States; or

(D) ~~[(4)]~~ an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 6. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program~~[, not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.40 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07];~~

(2) expenses associated with investigation, cleanup,

1 or corrective action measures performed in response to a release or
2 threatened release from a petroleum storage tank, whether those
3 expenses are incurred by the commission or pursuant to a contract
4 between a contractor and an eligible owner or operator as
5 authorized by this subchapter; and

6 (3) subject to the conditions of Subsection (e) [~~of~~
7 ~~this section~~], expenses associated with investigation, cleanup, or
8 corrective action measures performed in response to a release or
9 threatened release of hydraulic fluid or spent oil from hydraulic
10 lift systems or tanks located at a vehicle service and fueling
11 facility and used as part of the operations of that facility.

12 (r) Except as provided by Subsection (r-1), the [~~The~~
13 petroleum storage tank remediation account may not be used to
14 reimburse any person for corrective action performed after
15 September 1, 2005.

16 (r-1) In this subsection, "state-lead program" means the
17 petroleum storage tank state-lead program administered by the
18 commission. The executive director shall grant an extension for
19 corrective action reimbursement to a person who is an eligible
20 owner or operator under Section 26.3571. The petroleum storage
21 tank remediation account may be used to reimburse an eligible owner
22 or operator for corrective action performed under an extension
23 before August 31, 2007. Not later than July 1, 2007, an eligible
24 owner or operator who is granted an extension under this subsection
25 may apply to the commission in writing using a form provided by the
26 commission to have the site subject to corrective action placed in
27 the state-lead program. The eligible owner or operator must agree

1 in the application to allow site access to state personnel and state
2 contractors as a condition of placement in the state-lead program
3 under this subsection. On receiving the application for placement
4 in the state-lead program under this subsection, the executive
5 director by order shall place the site in the state-lead program
6 until the corrective action is completed to the satisfaction of the
7 commission. An eligible owner or operator of a site that is placed
8 in the state-lead program under this subsection is not liable to the
9 commission for any costs related to the corrective action.

10 (s) The petroleum storage tank remediation account may not
11 be used to reimburse any person for corrective action contained in a
12 reimbursement claim filed with the commission after March 1, 2008
13 [~~2006~~].

14 SECTION 7. Section 26.361, Water Code, is amended to read as
15 follows:

16 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
17 Notwithstanding any other provision of this subchapter, the
18 reimbursement program established under this subchapter expires
19 September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the
20 commission may not use money from the petroleum storage tank
21 remediation account to reimburse an eligible owner or operator for
22 any expenses of corrective action or to pay the claim of a person
23 who has contracted with an eligible owner or operator to perform
24 corrective action.

25 SECTION 8. (a) Section 26.3467(b), Water Code, as amended
26 by this Act, applies only to an offense committed on or after the
27 effective date of this Act. For purposes of this section, an

1 offense is committed before the effective date of this Act if any
2 element of the offense occurs before that date.

3 (b) An offense committed before the effective date of this
4 Act is governed by the law in effect when the offense was committed,
5 and the former law is continued in effect for that purpose.

6 SECTION 9. This Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 31, 2005

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1987 by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, Committee Report 1st House. Substituted: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
2008	(\$35,160,000)
2009	(\$17,700,000)
2010	(\$9,200,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from PETRO STO TANK REMED ACCT 655	Probable (Cost) from HAZARDOUS/WASTE FEE ACCT 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
2009	(\$17,700,000)	\$0	(\$7,200,000)	80.0
2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill also would strike language specifying that a certain percentage of the PST Remediation Account No. 655 may be used to pay administrative expenses of the PST remediation program.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 being transferred each fiscal year to the Waste Management Account No. 549. Although language providing for PST Remediation Account No. 655 to be used for administrative expenses and a statutory limit for the percentage of receipts to the PST Remediation Account No. 655 would be deleted by the bill, this estimate still assumes that funds from the PST Remediation Account No. 655 would still transfer to the Waste Management Account No. 549 to be used for administrative purposes, since other statutory provisions allow for the account to be used to pay expenses associated with cleanups. However, revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), so the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 21, 2005

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB1987** by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, As Introduced: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
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2008	(\$35,160,000)
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All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from PETRO STO TANK REMEDIATION ACCT 655	Probable (Cost) from HAZARDOUS/WASTE FEE ACCT 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
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2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 that can be transferred to the Waste Management Account No. 549, with a statutory limit of 21.1 percent of annual revenues. Since revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

By: Bonnen (Senate Sponsor - Armbrister) H.B. No. 1987
(In the Senate - Received from the House April 25, 2005;
April 26, 2005, read first time and referred to Committee on
Natural Resources; May 16, 2005, reported favorably by the
following vote: Yeas 10, Nays 0; May 16, 2005, sent to printer.)

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of underground and aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 7.156(c), Water Code, is amended to read as follows:

(c) A person commits an offense if the person is an owner or operator of an underground ~~[underground]~~ storage tank regulated under Chapter 26 into which any regulated substance is delivered ~~[or physically delivers any regulated substance into an underground storage tank regulated under Chapter 26]~~ unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

SECTION 2. Section 26.342, Water Code, is amended by adding Subsection (16-a) to read as follows:

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION 3. Sections 26.3467(a) and (b), Water Code, are amended to read as follows:

(a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank [A person] who [knowingly] violates Subsection (a) commits an offense that is punishable as provided by Section 7.156 for an offense under that section.

SECTION 4. Section 26.351(f), Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and

proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to [requests for all sites where] the executive director [agreed in writing that no corrective action plan was required must be received by the agency] no later than September 1, 2007 [2005]. The request must be complete, as judged by the executive director.

SECTION 5. Section 26.355(b), Water Code, is amended to read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

- (A) ~~[(1)]~~ an act of God;
- (B) ~~[(2)]~~ an act of war;
- (C) ~~[(3)]~~ the negligence of the State of Texas or the United States; or
- (D) ~~[(4)]~~ an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 6. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program~~, not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03, 16.40 percent of the gross receipts of that account for FY04/05, and 21.1 percent of the gross receipts of that account for FY06/07];~~

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) ~~subject to the conditions of Subsection (e) [of this section],~~ expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) Except as provided by Subsection (r-1), the [The] petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension

3-1 before August 31, 2007. Not later than July 1, 2007, an eligible
3-2 owner or operator who is granted an extension under this subsection
3-3 may apply to the commission in writing using a form provided by the
3-4 commission to have the site subject to corrective action placed in
3-5 the state-lead program. The eligible owner or operator must agree
3-6 in the application to allow site access to state personnel and state
3-7 contractors as a condition of placement in the state-lead program
3-8 under this subsection. On receiving the application for placement
3-9 in the state-lead program under this subsection, the executive
3-10 director by order shall place the site in the state-lead program
3-11 until the corrective action is completed to the satisfaction of the
3-12 commission. An eligible owner or operator of a site that is placed
3-13 in the state-lead program under this subsection is not liable to the
3-14 commission for any costs related to the corrective action.

3-15 (s) The petroleum storage tank remediation account may not
3-16 be used to reimburse any person for corrective action contained in a
3-17 reimbursement claim filed with the commission after March 1, 2008
3-18 [2006].

3-19 SECTION 7. Section 26.361, Water Code, is amended to read as
3-20 follows:

3-21 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
3-22 Notwithstanding any other provision of this subchapter, the
3-23 reimbursement program established under this subchapter expires
3-24 September 1, 2008 [2006]. On or after September 1, 2008 [2006], the
3-25 commission may not use money from the petroleum storage tank
3-26 remediation account to reimburse an eligible owner or operator for
3-27 any expenses of corrective action or to pay the claim of a person
3-28 who has contracted with an eligible owner or operator to perform
3-29 corrective action.

3-30 SECTION 8. (a) Section 26.3467(b), Water Code, as amended
3-31 by this Act, applies only to an offense committed on or after the
3-32 effective date of this Act. For purposes of this section, an
3-33 offense is committed before the effective date of this Act if any
3-34 element of the offense occurs before that date.

3-35 (b) An offense committed before the effective date of this
3-36 Act is governed by the law in effect when the offense was committed,
3-37 and the former law is continued in effect for that purpose.

3-38 SECTION 9. This Act takes effect September 1, 2005.

3-39 * * * * *

FAVORABLE
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR

By

(Author/Senate Sponsor)

5-16-05

(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,
have on 5/12/05, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

☒ do pass and be printed

☐ do pass and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested.

☒ yes ☐ no

A revised fiscal note was requested.

☐ yes ☒ no

An actuarial analysis was requested.

☐ yes ☒ no

Considered by subcommittee.

☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	<input checked="" type="checkbox"/>			
Senator Jackson, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Barrientos	<input checked="" type="checkbox"/>			
Senator Duncan	<input checked="" type="checkbox"/>			
Senator Estes	<input checked="" type="checkbox"/>			
Senator Fraser	<input checked="" type="checkbox"/>			
Senator Hinojosa			<input checked="" type="checkbox"/>	
Senator Lindsay	<input checked="" type="checkbox"/>			
Senator Madla	<input checked="" type="checkbox"/>			
Senator Seliger	<input checked="" type="checkbox"/>			
Senator Staples	<input checked="" type="checkbox"/>			
TOTAL VOTES	10	0	1	0

COMMITTEE ACTION

☒ S268 Considered in public hearing

☐ S270 Testimony taken

COMMITTEE CLERK

CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill
Retain one copy of this form for Committee files

WITNESS LIST

HB 1987

SENATE COMMITTEE REPORT

Natural Resources

May 12, 2005 - 1:30PM

Registering, but not testifying:

For: Cargill, Johnny (Tx Motor Transportation Association), Austin, TX
Cates, Phil (Tx Motor Transportation Association), Austin, TX
Mullins, Russell (Association of Electric Companies of Texas), Austin, TX

BILL ANALYSIS

Senate Research Center

H.B. 1987
By: Bonnen (Armbrister)
Natural Resources
5/12/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 1987 extends the life of the petroleum storage tank remediation account from September 1, 2005, to September 1, 2007. This legislation is necessary because there are approximately 2,800 sites still being cleaned up today; the majority of these sites will not make the September 1, 2005, deadline. Although the Texas Commission on Environmental Quality (TCEQ) has removed ineligible sites from the program, many of these remaining sites will not meet the deadline because of circumstances beyond their control, including problems with off-site access, bankruptcy, withdrawal from the market of a large remediation contractor and/or geological issues unique to where the site is located. For example, there are over 350 sites above the Ogallala Aquifer in West Texas where corrective action activities have taken longer and are more expensive because of the depth of the groundwater.

The extension of the program will be funded from the existing fee currently paid by distributors of motor fuel when they remove motor fuel from a terminal.

H.B. 1987 will also allow TCEQ to place any sites remaining in the program after September 1, 2007, into the state-lead program for completion provided the owner or operator demonstrates progress in attempting to complete corrective action activities during the next two years. These sites should be placed in the state-lead program because they will be unable to obtain insurance coverage to continue corrective action activities at their expense and will make continued clean-up impossible for most owners or operators. Owners or operators may also decide not to enter TCEQ's state-lead program and complete remediation activities themselves.

H.B. 1987 removes the requirement that transporters of motor fuel be held responsible for depositing motor fuel into underground storage tanks which do not have a valid TCEQ-issued delivery certificate. Because deliveries often occur at night when most retail facilities are closed, carriers are often unable to verify these certificates each time they deliver motor fuel to a retail location. The owner or operator of the underground storage tank should be the only party held responsible for ensuring each tank has been issued a valid delivery certificate.

H.B. 1987 also makes a technical correction to certain cleanup standards impacting petroleum storage tanks. Under the state's new cleanup standards for underground storage tanks (Texas Risk Reduction Rules Program, effective September 1, 2003), contamination found in backfill surrounding a tank may trigger a full-scale remediation of the site containing the tank. Prior to September 1, 2003, contamination found in backfill was not considered a trigger because such contamination is common to almost all tanks, is usually limited in scope, and does not extend to the surrounding soils or ground water. This bill restores the cleanup standard for backfill that existed prior to September 1, 2003.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 7.156(c), Water Code, to delete existing text providing that a person commits an offense if the person physically delivers any regulated substances into an underground storage tank regulated under Chapter 26 (Water Quality Control) with certain exceptions. Makes a nonsubstantive change.

SECTION 2. Amends Section 26.342, Water Code, by adding Subsection (16-a) to define "subsurface soil."

SECTION 3. Amends Sections 26.3467(a) and (b), Water Code, as follows:

- (a) Authorizes the owner or operator of an underground storage tank to comply with this subsection by obtaining a current copy of the certificate from the Internet website of the Texas Commission on Environmental Quality (TCEQ).
- (b) Provides that an owner or operator of an underground storage tank who violates, rather than a person who knowingly violates, Subsection (a) commits an offense that is punishable by Section 7.156 (Violation Relating to Underground Storage Tank).

SECTION 4. Amends Section 26.351(f), Water Code, to require the person performing corrective action under this section, if the release from an underground or above ground storage tank was reported to TCEQ on or before December 22, 1998, to meet specific deadlines, including for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request to be submitted to the executive director no later than September 1, 2007, rather than 2005. Deletes existing text regarding agreements in writing regarding corrective action plans.

SECTION 5. Amends Section 26.355(b), Water Code, to provide that an owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1). Makes conforming changes.

SECTION 6. Amends Section 26.3573, Water Code, by amending Subsections (d), (r), and (s) and adding Subsection (r-1), as follows:

- (d) Deletes existing text referring to allotted percentages for necessary expenses for the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program. Makes a nonsubstantive change.
- (r) Sets forth an exception, as provided by Subsection (r-1), to the provision that the petroleum storage tank remediation account is prohibited from being used to reimburse any person for corrective action performed after September 1, 2005.
- (r-1) Defines "state-lead program." Requires the executive director of TCEQ to grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. Authorizes the petroleum storage tank remediation account (account) to be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Authorizes an eligible owner or operator who is granted an extension under this subsection, no later than July 1, 2007, to apply to TCEQ in writing using a form provided by TCEQ to have the site subject to corrective action place in the state-lead program. Requires the eligible owner or operator to agree, in the application, to allow site access to state personnel and state contractors as a condition in the state-lead program under this subsection. Requires the executive director, on receiving the application for placement in the state-lead program under this subsection, by order, to place the site in the state-lead program until the corrective action is completed to the satisfaction of TCEQ. Provides that an eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to TCEQ for any costs related to the corrective action.
- (s) Prohibits the account from being used to reimburse any person for corrective action contained in a reimbursement claim filed with TCEQ after March 1, 2008, rather than 2006.

SECTION 7. Amends Section 26.361, Water Code, to provide that the reimbursement program established under this subchapter expires September 1, 2008, rather than 2006. Prohibits the

commission from using funds from the account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action on or after September 1, 2008, rather than 2006.

SECTION 8. Makes application of Section 27.3467(b), as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2005.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 12, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB1987** by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, As Engrossed: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
2008	(\$35,160,000)
2009	(\$17,700,000)
2010	(\$9,200,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE FUND</i> 1	Probable (Cost) from <i>PETRO STO TANK REMEDIATION ACCT</i> 655	Probable (Cost) from <i>HAZARDOUS/WASTE FEE ACCT</i> 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
2009	(\$17,700,000)	\$0	(\$7,200,000)	80.0
2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill also would strike language specifying that a certain percentage of the PST Remediation Account No. 655 may be used to pay administrative expenses of the PST remediation program.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 being transferred each fiscal year to the Waste Management Account No. 549. Although language providing for PST Remediation Account No. 655 to be used for administrative expenses and a statutory limit for the percentage of receipts to the PST Remediation Account No. 655 would be deleted by the bill, this estimate still assumes that funds from the PST Remediation Account No. 655 would still transfer to the Waste Management Account No. 549 to be used for administrative purposes, since other statutory provisions allow for the account to be used to pay expenses associated with cleanups. However, revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), so the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 31, 2005

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1987 by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, Committee Report 1st House. Substituted: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
2008	(\$35,160,000)
2009	(\$17,700,000)
2010	(\$9,200,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE FUND</i> 1	Probable (Cost) from <i>PETRO STO TANK REMEDI ACCT</i> 655	Probable (Cost) from <i>HAZARDOUS/WASTE FEE ACCT</i> 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
2009	(\$17,700,000)	\$0	(\$7,200,000)	80.0
2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill also would strike language specifying that a certain percentage of the PST Remediation Account No. 655 may be used to pay administrative expenses of the PST remediation program.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 being transferred each fiscal year to the Waste Management Account No. 549. Although language providing for PST Remediation Account No. 655 to be used for administrative expenses and a statutory limit for the percentage of receipts to the PST Remediation Account No. 655 would be deleted by the bill, this estimate still assumes that funds from the PST Remediation Account No. 655 would still transfer to the Waste Management Account No. 549 to be used for administrative purposes, since other statutory provisions allow for the account to be used to pay expenses associated with cleanups. However, revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), so the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality
LBB Staff: JOB, WK, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 21, 2005

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1987 by Bonnen (Relating to the regulation of underground and aboveground storage tanks.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1987, As Introduced: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
2008	(\$35,160,000)
2009	(\$17,700,000)
2010	(\$9,200,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from PETRO STO TANK REMED ACCT 655	Probable (Cost) from HAZARDOUS/WASTE FEE ACCT 549	Change in Number of State Employees from FY 2005
2006	\$0	\$6,200,000	\$0	0.0
2007	\$0	(\$61,700,000)	(\$7,400,000)	54.0
2008	(\$35,160,000)	(\$26,500,000)	(\$7,400,000)	91.0
2009	(\$17,700,000)	\$0	(\$7,200,000)	80.0
2010	(\$9,200,000)	\$0	(\$3,000,000)	50.0

Fiscal Analysis

The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would require that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007.

The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill would take effect on September 1, 2005.

Methodology

This estimate assumes that in fiscal year 2006, the bill would actually result in a savings to the PST Remediation Account No. 655 of \$6.2 million because extending the program beyond fiscal year 2006 would make it less imperative that cleanup sites be closed out as quickly as under current law.

Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-10.

Because the Petroleum Storage Tank Remediation fee will expire in fiscal year 2007, fund balances are expected to be depleted during fiscal year 2008. Absent those revenues, beginning in that year, this estimate assumes that PST remediation costs and state lead costs not covered by balances in the PST Remediation Account No. 655 would be paid out of the General Revenue Fund. All costs shown in the table above paid out of the General Revenue fund in fiscal year 2009 and fiscal year 2010 would be for the state-lead program.

Currently, administrative fees for the PST program are paid with a portion of revenues to the PST Remediation Account No. 655 that can be transferred to the Waste Management Account No. 549, with a statutory limit of 21.1 percent of annual revenues. Since revenues to the PST Remediation Account No. 655 decline significantly in fiscal year 2007 (only \$16.4 million in fiscal year 2006 as compared to \$39.8 million in fiscal year 2007), the amount of funds available to transfer for administrative expenses no longer will be sufficient to cover administrative costs of the program. Therefore, this estimate assumes that in fiscal year 2007 other revenues and balances in the Waste Management Account No. 549 will cover the portion of costs not available for transfer from the PST Remediation Account No. 655, and in fiscal years 2008-10, all administrative costs of the program would be paid from fund balances and revenues to the Waste Management Account No. 549.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that HB 1987, by Bannen / Ambriester,
(Bill No.) (Author/Sponsor)
was heard by the Committee on Natural Resources on 5/12/05,
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Holly C. Helmer
(Clerk of the reporting committee)

IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

ENROLLED

H.B. No. 1987

AN ACT

relating to the regulation of underground and aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 7.156(c), Water Code, is amended to read as follows:

(c) A person commits an offense if the person is an owner or operator of an underground [~~underground~~] storage tank regulated under Chapter 26 into which any regulated substance is delivered [~~or physically delivers any regulated substance into an underground storage tank regulated under Chapter 26~~] unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

SECTION 2. Section 26.342, Water Code, is amended by adding Subdivision (16-a) to read as follows:

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION 3. Sections 26.3467(a) and (b), Water Code, are amended to read as follows:

1 received by the agency no later than September 1, 2003. The person
2 may, in lieu of this requirement, submit by this same deadline a
3 demonstration that a corrective action plan is not required for the
4 site in question under commission rules. Such demonstration must
5 be to the executive director's satisfaction;

6 (3) for those sites found under Subdivision (2) to
7 require a corrective action plan, that plan must be initiated and
8 proceeding according to the requirements and deadlines in the
9 approved plan no later than March 1, 2004;

10 (4) for sites which require either a corrective action
11 plan or groundwater monitoring, a comprehensive and accurate annual
12 status report concerning those activities must be submitted to the
13 agency;

14 (5) for sites which require either a corrective action
15 plan or groundwater monitoring, all deadlines set by the executive
16 director concerning the corrective action plan or approved
17 groundwater monitoring plan shall be met; and

18 (6) for sites that require either a corrective action
19 plan or groundwater monitoring, have met all other deadlines under
20 this subsection, and have submitted annual progress reports that
21 demonstrate progress toward meeting closure requirements, a site
22 closure request must be submitted to [~~requests for all sites where~~]
23 the executive director [~~agreed in writing that no corrective action~~
24 ~~plan was required must be received by the agency~~] no later than
25 September 1, 2007 [2005]. The request must be complete, as judged
26 by the executive director.

27 SECTION 5. Section 26.355(b), Water Code, is amended to

read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) ~~[(1)]~~ an act of God;

(B) ~~[(2)]~~ an act of war;

(C) ~~[(3)]~~ the negligence of the State of Texas or the United States; or

(D) ~~[(4)]~~ an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 6. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program~~[, not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.40 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07];~~

(2) expenses associated with investigation, cleanup,

1 or corrective action measures performed in response to a release or
2 threatened release from a petroleum storage tank, whether those
3 expenses are incurred by the commission or pursuant to a contract
4 between a contractor and an eligible owner or operator as
5 authorized by this subchapter; and

6 (3) subject to the conditions of Subsection (e) [~~of~~
7 ~~this section~~], expenses associated with investigation, cleanup, or
8 corrective action measures performed in response to a release or
9 threatened release of hydraulic fluid or spent oil from hydraulic
10 lift systems or tanks located at a vehicle service and fueling
11 facility and used as part of the operations of that facility.

12 (r) Except as provided by Subsection (r-1), the [~~The~~
13 petroleum storage tank remediation account may not be used to
14 reimburse any person for corrective action performed after
15 September 1, 2005.

16 (r-1) In this subsection, "state-lead program" means the
17 petroleum storage tank state-lead program administered by the
18 commission. The executive director shall grant an extension for
19 corrective action reimbursement to a person who is an eligible
20 owner or operator under Section 26.3571. The petroleum storage
21 tank remediation account may be used to reimburse an eligible owner
22 or operator for corrective action performed under an extension
23 before August 31, 2007. Not later than July 1, 2007, an eligible
24 owner or operator who is granted an extension under this subsection
25 may apply to the commission in writing using a form provided by the
26 commission to have the site subject to corrective action placed in
27 the state-lead program. The eligible owner or operator must agree

1 in the application to allow site access to state personnel and state
2 contractors as a condition of placement in the state-lead program
3 under this subsection. On receiving the application for placement
4 in the state-lead program under this subsection, the executive
5 director by order shall place the site in the state-lead program
6 until the corrective action is completed to the satisfaction of the
7 commission. An eligible owner or operator of a site that is placed
8 in the state-lead program under this subsection is not liable to the
9 commission for any costs related to the corrective action.

10 (s) The petroleum storage tank remediation account may not
11 be used to reimburse any person for corrective action contained in a
12 reimbursement claim filed with the commission after March 1, 2008
13 [~~2006~~].

14 SECTION 7. Section 26.361, Water Code, is amended to read as
15 follows:

16 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
17 Notwithstanding any other provision of this subchapter, the
18 reimbursement program established under this subchapter expires
19 September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the
20 commission may not use money from the petroleum storage tank
21 remediation account to reimburse an eligible owner or operator for
22 any expenses of corrective action or to pay the claim of a person
23 who has contracted with an eligible owner or operator to perform
24 corrective action.

25 SECTION 8. (a) Section 26.3467(b), Water Code, as amended
26 by this Act, applies only to an offense committed on or after the
27 effective date of this Act. For purposes of this section, an

1 offense is committed before the effective date of this Act if any
2 element of the offense occurs before that date.

3 (b) An offense committed before the effective date of this
4 Act is governed by the law in effect when the offense was committed,
5 and the former law is continued in effect for that purpose.

6 SECTION 9. This Act takes effect September 1, 2005.

H.B. No. 1987

President of the Senate

Speaker of the House

I certify that H.B. No. 1987 was passed by the House on April 22, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1987 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

President of the Senate

Speaker of the House

I certify that H.B. No. 1987 was passed by the House
(1)

on April 22, 2005, by a non-record vote.
(2)

Chief Clerk of the House

I certify that H.B. No. 1987 was passed by the Senate

on May 25, 2005, by the following vote:
(3)

Yeas 31, Nays 0
(4) (5)

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT26

H.B. No.

1987

A BILL TO BE ENTITLED
AN ACT

By

Bomen

relating to the regulation of underground and aboveground storage tanks.

MAR 03 2005

Filed with the Chief Clerk

MAR 14 2005

Read first time and referred to Committee on

Environmental Regulation

MAR 29 2005

Reported favorably (as substituted)

APR 14 2005

Sent to Committee on (Calendars)

APR 22 2005

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of yeas, nays, present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of yeas, nays, present, not voting

APR 22 2005

Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of yeas, nays, present, not voting)

Engrossed

APR 25 2005

Sent to Senate

Robert Haney
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

APR 25 2005

Received from the House

APR 26 2005

Read and referred to Committee on

NATURAL RESOURCES

MAY 16 2005

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

MAY 25 2005

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent) (yeas, nays)

MAY 25 2005

Read second time, , and passed to third reading by (unanimous consent) (a viva voce vote) (yeas, nays)

MAY 25 2005

Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 25 2005

Read third time, , and passed by a (viva voce vote) (31 yeas, 0 nays)

MAY 25 2005

Returned to the House

Robert Spaw
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 25 2005

- _____ Returned from the Senate (~~as substituted~~)
(~~with amendments~~)
- _____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)
- _____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)
- _____ House conferees appointed: _____, Chair; _____,
_____, _____, _____
- _____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____, _____
- _____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)
- _____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

05 APR 13 PM 8:45

HOUSE OF REPRESENTATIVES